

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 343 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

M/S.CHHOTUBHAI J. PATEL & CO.

Appearance:

Mr.Mihir Thakore with Mr.M.R.Bhatt for
MR RP BHATT for Petitioner
Mr.D.A.Mehta, Mr.R.K.Patel & Mr.B.D. Karia for
MR KC PATEL for Respondent

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/96

ORAL JUDGEMENT (Per Soni J.)

Following questions are referred to this court at
the instance of the Revenue:-

- "1. Whether on the facts and in the circumstances of the case, the sum of Rs.56,857/- being interest payment was a proper deduction in computing the total income of the assessee ?
2. Whether on the facts and in the circumstances of the case the sum of Rs.5,56,486/- subject to verification was not properly disallowed as entertainment expenditure under sec.37 (2B) ?
3. Whether on the facts and in the circumstances of the case the sum of Rs.37,661/- on account of interest was properly disallowable u/s.40(b) ?
4. Whether on the facts and in the circumstances of the case the provisions of section 52(2) of the I.T. Act were not applicable in computing the capital gains ?

So far as question no.1 is concerned, the Revenue has withdrawn the same and, therefore, the same need not be answered.

So far as question no.2 is concerned, considering the expenditure to be entertainment expenditure, it is not allowed, but it is now covered by the Supreme Court judgment in the case of Commissioner of Income-tax vs. Patel Brothers & Co. Ltd. reported at 215 ITR 165. It is, therefore, required to be answered in the affirmative in favour of the assessee.

So far as question no.3 is concerned, the same is covered by the judgment of the Supreme Court in the case of Keshavji Ravji & Co. vs. Commissioner of Income-tax reported at 183 ITR 1. It is, therefore, answered in the negative in favour of the Revenue.

So far as question no.4 is concerned, the tribunal has held "It is undisputed that the flats were "transferred" to the ladies even according to the Department at the same price that the firm paid for it. the assessability to capital gains arises only on account of the application of Sec.52(2) of the Act. As a matter of fact there is no information before us and no evidence to show that the ladies paid any amounts over and above the amounts recorded in the document of transfer". To attract applicability of provisions of sec.52(2), it is for the Department to prove that anything more is paid than stated in the document or claimed by the party as held by the Supreme Court in the case of K.P.Varghese vs. Income-tax Officer, Ernakulam & Anr. reported at 131 ITR 597. In view of this, question no.4 is answered in the affirmative in favour of the assessee.

Reference stands disposed of accordingly. No
order as to costs.
